

## REMARKS

In the April 1, 2008, final Office Action, the United States Patent and Trademark Office ("the Office") rejected Claims 11-15 under 35 U.S.C. § 101 because the claimed data structure subject matter was said to be directed to non-statutory subject matter. Claims 1-30 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,781,901 ("Kuzma"). In the May 22, 2008, Advisory Action, the Office maintained the rejection and requested that support in the specification be found for the claim amendments.

Without admitting to the propriety of the rejections and for the sake of advancing the prosecution of the above-identified patent application, even though applicants do not entirely agree with the Office, Claims 1, 6, 11, 16, 21, 23-25, 26, and 28-30 have been amended to clarify the claimed subject matter. For example, the Office argued as follows on page 11 of the Office Action: "The Examiner notes that the structure claimed by Applicant is non-functional descriptive material (i.e. merely data with no functionality). Non-functional descriptive material is non-statutory subject matter, even when encoded on a computer-readable medium." In response, applicants have amended Claim 11 to recite its subject matter functionalities which were inherent in that claim. Withdrawal of the rejections under 35 U.S.C. § 101 is respectfully requested.

Applicants are unable to find, and the Office has failed to show, where the cited and applied references teach or suggest the claimed subject matter. For example, applicants are unable to find in the cited and applied references the element:

a message receiver for receiving the customizable, tag-based message, the message receiver being capable of processing the reference in the customizable, tag-based message to cause a piece of information stored in the first buffer to transfer to a second buffer if the first buffer contains the piece of information to be sent and the second buffer acts as a repository for receiving the piece of information and the piece of information stored in the second buffer to transfer to the first buffer if two conditions exist,

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

which first condition specifies that the second buffer contains the piece of information to be sent and which second condition specifies that the first buffer acts as the repository for receiving the piece of information

as recited by Claim 1, among other claims, albeit in different manners.

The Office has indicated as follows:

The Examiner notes that this limitation is given in the alternative in the independent claims, so Kuzma is not required to disclose this limitation in order to anticipate the claim, and as Kuzma recites the piece of information being transferred from the first buffer into the second buffer, it does not, and cannot meet the limitation of "if the second buffer contains the piece of information to be sent." It does, however meet the limitation that the first buffer contains the piece of information to be sent.

Although applicants do not entirely agree with the Examiner that the conjunction "and" can be used in this instance as a function word to indicate an alternative, applicants have amended the claims to expressly indicate the existence of two conditions. Thus, according to the Office, Kuzma does not and cannot meet the first condition which specifies that the second buffer contains the piece of information to be sent. See pending specification at page 5, lines 2-3; page 9, lines 14-16; and page 9, lines 18-19. Additionally, although applicants do not agree with the Office's interpretation in transforming a fixed-tag language, like HTTP, as a customizable, tag-based language, like XML, applicants have amended the claims as suggested by the Office to insert the word "XML" to clarify the claimed subject matter. Therefore, no *prima facie* case of anticipation has been established by the Office.

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206 682 8100

## CONCLUSION

Because the Office has failed to state a *prima facie* case of anticipation, the rejections should be withdrawn. Independent Claims 1, 6, 11, 16, 21, and 26 are clearly patentably distinguishable over the cited and applied references. Claims 2-5, 7-10, 12-15, 17-20, 22-25, and 27-30 are allowable because they depend from allowable independent claims and because of the limitations added by those claims. Consequently, reconsideration and allowance of Claims 1-30 is respectfully requested.

Respectfully submitted,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>



D.C. Peter Chu  
Registration No. 41,676  
Direct Dial No. 206.695.1636

DPC:jl

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100